



her attempt to drag them into the lawsuit by alleging a conspiracy to violate federal law fails to identify with sufficient particularity the elements of the claimed conspiracy. Finally, the Court should also dismiss plaintiff's false light claims because Washington has not recognized this tort.

## II. SUMMARY OF RELEVANT FACTS

On August 13, 2008, Plaintiff Lynn Ann Hust filed the complaint *pro se*, alleging that Media Defendants are "responsible for the false light publication on May 20, 2005 in furtherance of the WIA conspiracy." Complaint, ¶¶ 42-45, 358. She also claims the existence of several articles published by Media Defendants, but does not appear to claim any of these articles were false and defamatory. *See id.* ¶¶ 96, 125-26, 137, 165-68, 272. These articles were allegedly published on August 11, 2002, ¶¶ 125-26, 165, November 6, 2002, ¶ 166, December 18, 2002, ¶ 167, January 8, 2003, ¶ 168, May 20, 2005, ¶ 96, June 15, 2006, ¶ 137, and July 17, 2006, ¶ 272.

Plaintiff also alleges that unknown third parties used the "First Amendment assets" of Media Defendants to commit defamation and false light. *Id.* ¶ 225. Plaintiff asserts that Media Defendants failed to tell her side of the story, aimed to "silence a federal whistleblower with retaliation," and invaded her privacy with the "false light" publications. *Id.* ¶¶ 359-60, 363, 401.

Plaintiff also generally alleges Media Defendants engaged in conspiracy. *E.g.*, ¶¶ 294, 358, 363. She claims that numerous state actors "with one or more agents of the following defendants"... "agreed to both the objective and the course of action that would result the injury [sic] to Events WorldWide and plaintiff; one or more of them did commit one or more of the following overt acts pursuant to that agreement." *Id.* ¶ 294. The listed

defendants include Media Defendants, and the paragraph describes several acts that “one or more of them” allegedly committed. *See id.*

### III. ARGUMENT

#### A. Plaintiff’s Claims Are Subject To a Heightened Pleading Standard.

A motion to dismiss under Rule 12(c) tests a complaint’s legal sufficiency,<sup>1</sup> a test that plaintiff has failed to meet. Plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007). Although the Court must accept as true a complaint’s well-pleaded factual allegations, the Ninth Circuit has “consistently emphasized... that conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper motion to dismiss.” *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007) (citation omitted). “[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). This rule applies equally to complaints by *pro se* litigants. *Jones v. Community Redevelopment Agency of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984).

Media Defendants recognize that “[t]he allegations of a *pro se* complaint, however inartfully pleaded, should be held to less stringent standards than formal pleadings drafted by lawyers.” *Id.* (internal quotation marks and citation omitted). However, as *Jones* and other cases instruct, a *pro se* complaint will be dismissed if the complaint and the circumstances giving rise to the complaint establish that the plaintiff has not alleged and

---

<sup>1</sup> A motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is decided under the same standard that applies to a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6). *See McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

cannot allege a claim. *Id.* at 649-50; *see also Schucker v. Rockwood*, 846 F.2d 1202, 1204-05 (9th Cir. 1988); *Simson v. United States*, 56 F. Supp. 2d 1193, 1194 (D. Or. 1999) (dismissing *pro se* complaint without leave to amend because of contrary controlling authority); *McMillan v. Dep't of Interior*, 907 F. Supp. 322, 329 (D. Nev. 1995), *aff'd*, 87 F.3d 1320 (9th Cir. 1996) (dismissing complaint by *pro se* litigant without leave to amend because some claims legally barred and other claims frivolous). *Cf. Marks v. United States*, 578 F.2d 261, 263-64 (9th Cir. 1978) (affirming entry of summary judgment against *pro se* plaintiff because claims purely speculative); *United States v. Bell*, 27 F. Supp. 2d 1191, 1197 (E.D. Cal. 1998) (*pro se* litigants must “follow the same rules of procedure that govern other litigants”; affirming entry of summary judgment against *pro se* plaintiff).

In addition, the plaintiff must present “a short and plain statement of the claim showing that the pleader is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Courts apply Rule 8(a)’s requirements more stringently in cases alleging defamation and related claims that implicate First Amendment rights. *Harris v. City of Seattle*, 2003 WL 1045718, at \*3 (W.D. Wash. Mar. 3, 2003) (“[C]ourts should consider First Amendment concerns even at the pleading stage.”); *see also Flowers v. Carville*, 310 F.3d 1118, 1130-31 (9th Cir. 2002) (noting “[t]he First Amendment is not irrelevant at the pleading stage,” and finding a defamation allegation sufficient when it pled “the precise statements alleged to be defamatory, who made them and when.”); *Franchise Realty Interstate Corp. v. San Francisco Local Joint Exec. Bd. of Culinary Workers*, 542 F.2d 1076, 1082-83 (9th Cir. 1976) (where “conduct... is prima facie protected by the First Amendment, the danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required”). This principle is not limited

1 to defamation claims, and applies equally to any claims whose injury stems from First  
2 Amendment activity.<sup>2</sup>

3 **B. Plaintiffs' Claims Are Barred by the Statute of Limitations.**

4 Defamation claims must be brought within two years of publication. RCW  
5 4.16.100. Included within this limit are all causes of action based on allegedly defamatory  
6 statements, including false light claims. *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466,  
7 722 P.2d 1295 (1986) (applying two-year statute of limitations to bar negligence, negligent  
8 infliction of emotional distress, and false light claims where defamation claim, based on  
9 same facts, was also time-barred).

10 Here, the most recent publication by any of the Media Defendants allegedly  
11 occurred on July 17, 2006. Complaint ¶ 272. Plaintiff filed her complaint August 13,  
12 2008. More than two years elapsed between these dates, meaning plaintiff's claims—all of  
13 which stem from allegedly defamatory statements—must be dismissed with prejudice.

14 **C. Plaintiff Fails to Allege Publication By Defendants News Corp. and  
15 MediaNews Group, A Prerequisite To a Defamation Claim.**

16 “[A] defamation plaintiff must show four essential elements: falsity, an  
17 unprivileged communication, fault, and damages.” *Mark v. Seattle Times*, 96 Wash.2d 473,  
18 486, 635 P.2d 1081 (1981). Plaintiff has failed to allege that defendants News Corp. and  
19 MediaNews Group made any communications—i.e., that they published any statements at  
20 all, let alone defamatory ones. Only one paragraph refers to them:

21  
22 <sup>2</sup> For example, those seeking to challenge an individual's First Amendment petition rights face these same  
23 heightened pleading requirements. *See Or. Natural Res. Council v. Mohla*, 944 F.2d 531, 533 (9th Cir.  
1991); *Franchise Realty Interstate Corp. v. S.F. Local Joint Exec. Bd. of Culinary Workers*, 542 F.2d 1076,  
1082-83 (9th Cir. 1976).

44. News Corporation and MediaNews Group, 101 W. Colfax Avenue, Suite 1100; Denver, Colorado 80202 is responsible for the false light publication on May 20, 2005 in furtherance of the WIA conspiracy.

Only by guessing might these defendants figure out how they are related to the false light publication. Rule 8 requires a more specific allegation than this cryptic statement. Neither News Corp. nor MediaNews owns or has any relationship to either of the newspapers where the article allegedly appeared. The Court should dismiss plaintiff's claims for this additional reason.

**D. Plaintiff Fails to Allege Any Actionable Conspiracy.**

Plaintiff's conspiracy claims, too, are subject to a heightened pleading standard. "[T]o survive a motion to dismiss, plaintiffs alleging a conspiracy to deprive them of their constitutional rights must include in their complaint nonconclusory allegations containing evidence of unlawful intent or face dismissal prior to the taking of discovery." *Harris v. Roderick*, 126 F.3d 1189, 1195 (9th Cir. 1997); *see also Twombly*, 127 S. Ct. at 1966 (2007) ("a bare assertion of conspiracy will not suffice... and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality."); *Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

As Judge Robert Sack of the Second Circuit has aptly observed, "[a] libel or slander action cannot be pleaded or prosecuted as an action for 'conspiracy'" because "[p]lainly, the fact that two or more persons were involved in one way or another in the publication of an allegedly defamatory statement does not transmute the defendants' behavior into an actionable conspiracy." Sack on Defamation, § 13.9, at 13-64 (3d ed. 2006). Simply put, "[a]n action for defamation may not be pleaded as a conspiracy."

1 *Cohn v. Nat'l Broad. Co.*, 3 Med. L. Rptr. 1999 (N.Y. Sup. Ct. 1978); *Russo v. Advance*  
2 *Public 'ns, Inc.*, 33 A.D.2d 1025, 1025, 307 N.Y.S.2d 916, 916 (N.Y. App. 1970).

3 Even where a cognizable defamation claim exists, courts apply the law of civil  
4 conspiracy with particular care to avoid stifling speech. "Collaboration between  
5 individuals with an axe to grind and reporters eager for a story is not uncommon; rather, it  
6 is the way the new media frequently operate.... But such collaboration does not, without  
7 more, a conspiracy make..." *Dowd v. Calabrese*, 589 F. Supp. 1206, 1213 (D.D.C. 1984).  
8 In *Dowd*, two federal prosecutors alleged they were defamed by a Wall Street Journal story  
9 suggesting that they had used an improper means to persuade Samuel Calabrese, a reputed  
10 organized crime figure, to cooperate with the government. *Id.* at 1210. Plaintiffs alleged a  
11 conspiracy between the reporter and Calabrese, who had acted as a source, but the court  
12 rejected the claim because "the traditionally-recognized relationships between sources and  
13 reporters could become actionable as conspiracies on a substantial scale, and the inevitable  
14 result would be the 'chilling' of such relationships and collaborations, to the detriment of  
15 the values inherent in the First Amendment." *Id.* at 1214.

16 Plaintiff has made nothing more than conclusory allegations of conspiracy. She has  
17 not identified the participants of the alleged agreement (stating only that "one or more" of  
18 the numerous defendants were involved). Nor has she provided the date such agreement  
19 was made, the place where it took place, or its precise content. Indeed, plaintiff has  
20 pleaded no more than that Media Defendants published stories. Plaintiff's claims thus  
21 appear to be based on nothing more than the fact that Media Defendants published articles  
22 for which, like all journalists, they had sources, and should therefore be dismissed.  
23

**E. The Court Should Dismiss Plaintiff's False Light Claims Because Washington Has Not Recognized This Tort.**

The Washington Supreme Court has not recognized the false light tort. *Eastwood v. Cascade Broad. Co.*, 106 Wn.2d 466, 473-74, 722 P.2d 1295 (1986); *Hoppe v. Hearst Corp.*, 53 Wn. App. 668, 677 n. 5, 770 P.2d 203 (1989) (“[T]he trial court could have properly dismissed Hoppe’s false light claim on the basis that thus far, Washington has not recognized the tort.”). The Court should thus dismiss plaintiff’s false light claims for this additional reason.

**IV. CONCLUSION**

For the foregoing reasons, Media Defendants respectfully request the Court dismiss the Complaint with prejudice.

DATED this 18th day of December, 2008.

Davis Wright Tremaine LLP  
Attorneys for Defendants Associated Press,  
Casper Star-Tribune, Laramie Boomerang and  
News Corp.

By /s/ Ambika Doran  
Bruce E. H. Johnson, WSBA #7667  
Ambika Doran, WSBA #38237

Perkins Coie LLP  
Attorneys for Defendant MediaNews Group

By /s/ David J. Burman  
David J. Burman, WSBA #10611



**CERTIFICATE OF SERVICE**

I hereby certify that on Dec. 18, 2008, I electronically filed the document to which this certificate is attached with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

**FOR PLAINTIFF PRO SE:**

**Via Electronic Service by U.S.D.C.**

lynnhust@officialhmusa.com

Lynn Ann Hust  
1501 N.E. 20<sup>th</sup> Avenue  
Battle Ground, WA 98604

**(Copy also being simultaneously sent by  
U.S. First Class mail.)**

**FOR DEFENDANT BATTLE  
GROUND POLICE DEPARTMENT;  
CITY COUNCIL (THE CITY OF  
BATTLE GROUND, STATE OF  
WASHINGTON); AND DEFENDANTS  
DOES ONE-FOUR:**

**Via Electronic Service by U.S.D.C.**

jjjustice@lldkb.com

John E. Justice, WSBA No. 23042  
Law, Lyman, Daniel, Kamerrer &  
Bogdanovich, P.S.  
P.O. Box 11880  
Olympia, WA 98508-1880

**FOR DEFENDANT CLARK COUNTY  
PROSECUTING ATTORNEY, CLARK  
COUNTY SUPERIOR COURT,  
COUNTY BOARD OF  
COMMISSIONERS, THE COUNTY  
OF ALBANY, STATE OF WYOMING,**

**Via Electronic Service by U.S.D.C.**

bernard.veljacic@clark.wa.gov

Bernard F. Veljacic  
P.O. Box 5000  
Vancouver, WA 98666-500

<b>FOR DEFENDANT A. JOE HAGEMAN</b>  Frank Steinmark Chism Thiel McCafferty & Campbell 1601 Fifth Avenue Suite 2210 Seattle, WA 98101	<b>Via Electronic Service by U.S.D.C.</b>  fsteinmark@ctmcslaw.com
<b>FOR DEFENDANT LARAMIE PLAINS COMMUNITY FEDERAL CREDIT UNION</b>  Michael E. Siderius SIDERIUS LONERGAN & MARTIN 500 Union Street Suite 847 Seattle, WA 98101-2394	<b>Via Electronic Service by U.S.D.C.</b>  michaels@sidlon.com
<b>FOR DEFENDANT LARAMIE POLICE DEPARTMENT, GWENDOLYN K SMITH, AND CITY COUNCIL</b>  John Mark Stewart Davis & Cannon, LLP 422 W. 26 <sup>th</sup> Street Cheyenne, WY 82001	<b>Via Electronic Service by U.S.D.C.</b>  mark@davisandcannonchey.com
<b>FOR DEFENDANT MEDIANEWS GROUP</b>  David J. Burman Perkins Coie LLP 1201 Third Avenue Suite 4800 Seattle, WA 98101-3099	<b>Via Electronic Service by U.S.D.C.</b>  dburman@perkinscoie.com
<b>CO-COUNSEL FOR DEFENDANT GWENDOLYN K. SMITH</b>  Michael Barry Tierney MICHAEL B TIERNEY PC 2955 80 <sup>th</sup> Avenue S.E. Suite 205 Mercer Island, WA 98040	<b>Via Electronic Service by U.S.D.C.</b>  tierney@tierneylaw.com

**FOR DEFENDANTS STATE OF  
WASHINGTON; CHRISTINE O.  
GREGOIRE, GOVERNOR OF THE  
STATE OF WASHINGTON; AND  
WASHINGTON STATE PATROL**

Mark Conlin Jobson, WSBA No. 22171  
Assistant Attorney General  
Torts Division  
7141 Cleanwater Drive SW  
P.O. Box 40126  
Olympia, WA 98504-0126

**Via Electronic Service by U.S.D.C.**

MarkJ@atg.wa.gov, CynthiaM4@atg.gov,  
KathrynL@atg.wa.gov;  
TorOlyEF@atg.wa.gov

**FOR DEFENDANT STATE OF  
WYOMING, DAVE FREUDENTHAL,  
GWENDOLYN SMITH, SECOND  
JUDICIAL CIRCUIT COURT**

Christine Cox  
Wyoming Attorney General's Office  
2424 Pioneer Avenue 2<sup>nd</sup> Floor  
Cheyenne, WY 82002

**Via Electronic Service by U.S.D.C.**

ccox1@state.wy.us

**FOR DEFENDANTS BOARD OF  
COUNTY COMMISSIONERS OF  
ALBANY COUNTY, ALBANY  
COUNTY SHERIFF'S DEPARTMENT,  
AND RICHARD BOHLING**

Francis S. Floyd  
Nicholas L. Jenkins  
Floyd Pflueger & Ringer PS  
300 Trianon Building  
2505 Third Avenue  
Seattle, WA 98121-1445

Richard Rideout, PC  
211 West 19<sup>th</sup> Street, Suite 100  
P.O. Box 389  
Cheyenne, WY 82003-0389

**Via Electronic Service by U.S.D.C.**

ffloyd@floyd-ringer.com  
njenkins@floyd-ringer.com

rsrideout@qwestoffice.net

1 I declare under penalty of perjury that the above and foregoing is true and correct.

2 DATED in Seattle, Washington this 18th day of December, 2008.

3  
4 /s/ Ambika Doran

Ambika K. Doran